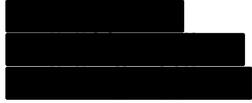




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/173698

PRELIMINARY RECITALS

Pursuant to a petition filed April 18, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 18, 2016, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$155 for December 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By:

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Winnebago County. There are three people in her household.

2. On July 9, 2014 the agency sent the petitioner a notice regarding her FoodShare (FS) benefits. The notice stated that if her monthly household gross income increased above \$1,649.17 she had to report the increase in income by the 10th day of the following month. This \$1,649.17 is 100% of the Federal Poverty Level (FPL) for a household size of three. 130% FPL for a household size of three is \$2,143.92.
3. The petitioner's household monthly gross income was as follows:
 - a. August 2014 – \$2,075.43
 - b. September 2014 - \$1,747.75
 - c. October 2014 - \$2,736.46
 - d. November 2014 – \$2,167.70
 - e. December 2014 - \$2,360.61
4. The petitioner never reported an increase in income.
5. In December 2014 the petitioner received \$155 in FS benefits. She was not entitled to FS benefits in December 2014.
6. On March 11, 2016 the agency sent the petitioner a notice stating that she was overpaid \$155 in FS benefits, under claim number [REDACTED], in December 2014.
7. On April 18, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 *Code of Federal Regulations (CFR)* § 273.18(b), see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

The FS regulations require that a household reports when their income exceeds 130% of the federal poverty level (FPL). *FoodShare Wisconsin Handbook (FSWH)* § 6.1.1.2. The household must report this increase in income by the 10th of the month following the income exceeding 130% of the FPL. *Id.*

In this case the petitioner's household gross income exceeded 130% FPL in October 2014. She had until November 10, 2014 to report this increase in income. Had she timely reported, she would not have received FS benefits in December 2014. She received \$155 of FS benefits in December 2014. I reviewed the agencies calculations, and the agency is correct that the petitioner was not entitled to FS benefits in December 2014. Thus, the \$155 FS overpayment is correct.

The petitioner argues that she did not believe she needed to report because her husband's income was from the Department of Vocational Rehabilitation (DVR). She believed that because this was through the State that the State would know about it. This is a separate State agency. The State did not know about this DVR income immediately. Eventually the agency learned of it, and issued this overpayment notice. The notice sent to the petitioner in July 2014 specifically stated her reporting requirements, which she did not follow. I understand that this was error, and not intentional. The agency has classified this overpayment as client error.

CONCLUSIONS OF LAW

The agency correctly established a FoodShare (FS) overpayment in the amount of \$155 for December 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

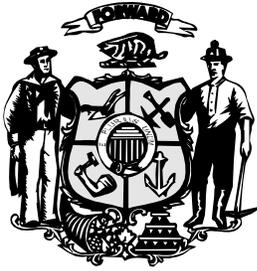
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on May 27, 2016.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability